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ABSTRACT

A pamphlet reviewing the employment rights of school administrators in each state, this report distinguishes between substantive and procedural rights for administrators threatened with demotion or dismissal. The author argues that principals should be aware of the kind and degree of statutory employment protection in their states, which differ in the rights they allow administrators. Seventeen states, it is found, allow tenure to principals and require just cause, as well as public hearings, for dismissal; other states provide procedural safeguards without a just cause review, grant tenure to urban principals but not to rural, allow principals tenure only as teachers, or allow no tenure at all. (JW)

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A Legal Memorandum

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ADMINISTRATOR TENURE STATUTES AND OTHER LEGISLATIVE PROTECTION OF POSITION

A principal's employment protection rights are determined primarily by the laws of each state. Some state statutes, usually referred to as tenure laws, provide qualified educators with an assurance of continued employment as administrators unless just cause can be shown for dismissal or demotion.

The purpose of administrative tenure provisions--like teacher tenure laws--is to enhance the stability and quality of public education by providing deserving educators with an assurance of continued employment. While a number of states provide administrator tenure rights by statute, a majority have chosen to limit this kind of employment protection to retention as a teacher. School administrators in these states, therefore, continue to serve in their positions only for the length of their contracts, which are renewable at will of the local school board.

Among the states that have enacted tenure laws, there are marked differences in the type and amount of job security provided. This Legal Memorandum reviews administrator employment rights in each state. Because statutes change, and because some are not completely clear, every administrator should check with his or her state association, state office of education, or similar local authority to be certain of the up-to-date provisions, and whether they have been interpreted by the state's courts. The statutory information provided here is as accurate as possible as of July 1, 1983.

Tenure as a Principal

The following jurisdictions grant principals and other administrators some kind of substantive tenure protection in their administrative positions:

Alabama	Michigan	Oregon
District of Columbia	Nebraska	Pennsylvania
Hawaii	Nevada	South Dakota
Iowa	New Jersey	Washington
Louisiana	New York	West Virginia
Massachusetts	North Carolina	

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The specific provisions, such as the length of the probationary periods new administrators must serve before tenure is conferred, and the exact steps to be followed before dismissal vary from state to state. Also, it should be noted that Louisiana and New Jersey specifically exclude assistant principals and other supervisory personnel from the employment protection granted principals. There is a general similarity, however, among statutes regarding the type of procedures required before dismissal can be made final. Nearly all of the provisions mandate protections such as notice of intent to dismiss with an explanation of the reasons for termination. A hearing at which the principal can contest the charges is also usually specified. But the key factor in a true tenure statute is the substantive requirement of dismissal only for statute-defined cause.

The following excerpt from the Massachusetts Code is a good example of a principal tenure statute.

> No principal, supervisor, assistant principal, or professional employee performing the duties of a principal, supervisor, assistant principal, by whatever title his position may be known, who has served in that position for over three years shall without his consent be demoted except for inefficiency, incapacity, unbecoming conduct, insubordination, or other good cause; nor unless, at least 30 days exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; nor unless, if he so requests he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his demotion is proposed; nor unless, if he so requests, he has been given a hearing before the school committee, which may be either public or private at the discretion of the school committee, and at which he was to be represented by counsel, present evidence, and call witnesses to testify in his behalf and examine them; nor unless the charge or charges shall have been substantiated; nor unless the superintendent shall have given the committee his recommendations thereon.
>
> For the purpose of this section, a person shall be deemed to have been demoted if his salary has been reduced contrary to the provisions of Sec. 43 of this chapter, or if he has been transferred without his consent to a position wherein he no longer serves at discretion.
>
> Any person who has been demoted by vote of a school committee under the provisions of this Section may within 30 days after the vote of dismissal or demotion appeal therefrom to the superior court in the county in which he was employed. (Emphasis added).

Just Cause

The most important safeguard provided by tenure statutes is the requirement that there be a "just cause" or some other stated cause for the termination. This prerequisite is intended to ensure that a dismissal will not be motivated by personal animosity, political motivation, or mere caprice. "Just cause" has been defined as "one which directly or indirectly, significantly and adversely affects what must be the ultimate goal of every school system: high quality education." Briggs v. Board of Directors, 282 N.W. 2d 740, 743 (Iowa 1979).

Yet the courts have had difficulty applying this standard to individual cases. A school board may consider novel methods or unorthodox behavior as creating an adverse effect, and hence grounds for termination. To avoid this problem, a hearing officer or judge should seek factual evidence of a substantial detrimental effect before validating a school district's claim that "just cause" exists.

Reductions in Force

A school board may sometimes terminate educators even when statutory "just cause" does not exist. One justification usually recognized by the courts is economic necessity, such as declining revenues. Falling enrollments, too, may be regarded as justifying reductions in force (RIFs), and such factors have become a frequently invoked basis for nonrenewal of administrators as well as teachers in recent years. Some statutes specifically exempt RIF terminations from the requirements of the tenure act. In other states the courts have found the legitimate financial necessity of reductions, caused by changing population demographics, to constitute exceptions to the relevant tenure provisions. Courts will inquire into the legitimacy of a RIF dismissal to avoid "a subterfuge by which an unscrupulous school board would use a fictitious necessity for staff reduction as a pretext for discharging" an educator. Hagarty v. Dysart-Geneseo Community School District, 282 N.W. 2d 92, 99 (Iowa, 1979); accord. Ryan v. Ambach, 419 N.Y.S. 2d 214, 216 (App. Div. 1979). In the absence of evidence that such subterfuge exists, however, administrator tenure provisions offer little protection against the elimination of positions for budgetary purposes. (See, Lane v. School Committee, 392 N.E. 2d 531, 532, Mass. 1979). (For a complete review of reduction in force, see the Legal Memorandum on this subject, January 1981).

Defining Demotions

In order to meet changing circumstances, school boards are also increasingly reassigning principals and other administrators to new and different duties. They will usually try to characterize these reassignments as "transfers" rather than "demotions," which may be barred by statute.

In some cases, it is difficult to distinguish transfers which entail no downgrading of the principal's status from transfers which are, in actuality, thinly veiled demotions. And, unless the transfer is classified as a demotion, a principal may be unable to invoke tenure protection even in the states which provide job protection for administrators. Tenure laws cannot safeguard an administrator against all transfers. In Georgia, for example, a court has held that a transfer is not a demotion unless there is a reduction in all three of the following: salary, responsibility, and prestige. (Rockdale County School District v. Weil, 266 S.E. 2d 919, Ga. 1980). However, courts in some other jurisdictions hold a different view. These courts have recognized that a myriad of deleterious effects may result from a transfer. These courts, therefore, consider the totality of harms and effects from a transfer to determine if tenure protections are warranted.

Under this approach, a transfer entailing diminished authority, even though the salary remains unchanged, has been deemed a demotion. (Jefferson County-DuBois Voc. Tech. School v. Horton, 413 A. 2d 36 Pa. 1980). Courts have also declared

that reduction in salary alone renders a transfer a demotion. (Glennon v. School Committee of Boston, 378 N.E. 2d 1372, Mass. 1978). If the principal with administrative tenure is unable to obtain tenure in the new position, the principal may also be considered to have been demoted. (Mass. Stat. C. 71 Sec. 42A. See full text on page 2). Similarly, while a reassignment may not bring an immediate reduction in salary, diminished future earnings may justify the contention that the reassignment is a demotion. (Cooper v. Board of Education of Somerset, 587 S.E. 2d 845, KY 1979).

Administrator employment protection statutes were presumably intended to provide safeguards against precisely these ramifications that arise from a major change of duties, whether labeled a reassignment, transfer, or demotion. For this reason, those courts which have applied tenure requirements to transfers with accompanying harmful effect would appear to have taken the more logical view.

Procedural Protection

A growing number of state legislatures have chosen to provide procedural safeguards to principals threatened with termination, while stopping short of providing full, substantive tenure rights. (Some of these states do provide administrators with teacher tenure; others do not.) Some of the states that stress this kind of procedural protection for administrators are:

Indiana
Kentucky
New Hampshire
Rhode Island
Virginia

The procedural statutes require a minimum notice period and some kind of a hearing or meeting with the board or superintendent. Usually, too, a written statement of the reasons for termination or reassignment must be given before a principal may be reassigned. A section of the Rhode Island Code is indicative of this type of statute.

> The General Assembly recognizes that public school administrators either serve at the pleasure of local or regional school committees or serve under contracts for a specific term. The General Assembly further recognizes that such administrators are not members of teacher collective bargaining units and, therefore, are not protected by the terms of teacher bargaining agreements. While clearly intending neither to interfere with the discretion of school committees to choose those who shall administer local schools nor to grant tenure to school administrators, the General Assembly deems it necessary to the orderly and effective functioning of public education to inform school administrators the bases or reasons for their suspension, dismissal or nonrenewal of their employment relationship, and to afford administrators an opportunity to be heard before the school committee. Full disclosure of the bases or reasons for suspension, dismissal or nonrenewal and the hearing which may follow, while providing administrators and school committee a meaningful hedge against mistaken or impermissible actions as well as an opportunity to question and confront those individuals whose judgment or allegations furnish the basis for the actions taken, are ultimately intended to erase harmful innuendo from any suspension, dismissal or nonrenewal of an administrator. (Emphasis added).
>
> (R.I. G.L. Sec. 16-12.1-1)

Unlike full tenure, the procedural statutes do not mandate that removal shall be for enumerated and defined reasons only. Instead, dismissal may occur for any reason so long as it is not a legally impermissible one. The difference is, of course, an important one.

A hearing at which a principal may present his case is the sole protection against arbitrary and unwarranted removals, provided by procedural-protection legislation. Without a just cause requirement there is often little basis upon which a principal may build a successful defense in a termination proceeding. The problem is exacerbated by the fact that in many jurisdictions the hearing will be conducted by the local school board. The formal hearing may, therefore, be a hollow safeguard. Some courts have even questioned whether a fair and impartial hearing can be conducted before a body of persons whose chief employee, the superintendent, has made the recommendation for termination. Such a procedure may even violate an administrator's 14th Amendment due process rights "by allowing the board to simultaneously serve as a prosecutor, judge, and jury." Briggs v. Board of Directors, supra. 744. But, the U.S. Supreme Court has placed a heavy burden upon the person seeking to challenge the board's objectivity, and will not automatically presume bias.

States with an Urban-Rural Tenure Distinction

Several states grant tenure rights only to principals employed in densely populated areas. Principals in the smaller, rural school districts are unable to obtain administrative tenure. The following states comprise this category:

Minnesota
Missouri
Wisconsin

These three states share some common qualities. Each contains sparsely inhabited rural areas along with a few large urban centers. Their legislatures apparently perceive a meaningful difference in the needs of the large and small school districts, and desire to preserve flexibility in the management of personnel in districts with small enrollments. The larger districts are able to provide tenure protection without assuming excessive financial burdens, while administrators in the smaller school districts are either ineligible for tenure, or receive tenure as teachers only.

Tenure as a Teacher

As indicated previously, a large number of states do not provide administrators with tenure as administrators, but permit them to achieve tenure status as teachers. These 20 states are:

Alaska	Idaho	North Dakota
Arizona*	Illinois	Ohio
California	Indiana	Oklahoma
Colorado	Maryland	Tennessee
Connecticut	Montana	Texas
Delaware	New Hampshire	Wyoming
Georgia	New Mexico**	

* if teaching at least half-time.
**only for two years in district after accepting administrative position.

Under their statutes, educators who gain teacher tenure in a school district retain these rights upon promotion to principal or assistant principal. These administrators are thus assured of continuing service with the school district, although not of continuing in the capacity of an administrator. Under this type of statute, a principal may be reassigned to classroom teaching, or any other position for which he or she is properly certified. Obviously, this kind of statute compares very unfavorably with one that provides principals with tenure in the position of principal. In some of these states, however, the principal returned to the classroom has the right to maintain an administrative salary.

Non-Tenure States

Only a few states provide no tenure protection whatsoever to principals, either as teachers or as administrators:

Arkansas	Mississippi
Florida	South Carolina
Kansas	Utah
Maine	Vermont

Some of these states lack employment protection procedures for any school employees. Others allow teachers to acquire tenure but specifically exclude administrators. Principals in these states thus serve for the length of their contracts with the school board, but with no legal right to continuing employment. All of the states in this category may fairly be classified as primarily rural, and their legislatures may therefore have adopted the same view as those in states which have provided statutory protection only to administrators in the urban parts of their states.

Conclusion

During the past decade numerous states have enacted legislation providing school administrators with employment protection. During the same period only a handful of states have revoked their previous tenure provisions. State legislatures, especially in the more industrialized states, seem willing to increase and enhance the employment security rights of principals and other administrators, by developing at least procedural protections, if not recognizing substantive rights as well.

Another type of legislative job protection for administrators authorizes multi-year contracts, usually for terms of two or three years. Such provisions are rarely, if ever, mandatory, and still permit nonrenewal without cause, or opportunity for hearing at the end of the contract term. They do provide greater assurance of continuity, however, than the typical year-to-year contract, and if issued on an overlapping basis, will assure an administrator a longer period of time to find a new position should a contract fail to be renewed.

Principals should be aware of the kind and degree of employment protection afforded them by statute in their states. Knowledge of one's employment rights is indispensable in assuring that full procedures and guidelines are observed in the event of an attempted transfer or dismissal.

This Legal Memorandum was prepared by NASSP's Director of Legal and Governmental Affairs, Ivan Gluckman, with the substantial research assistance of former Summer Intern William Vita.

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